
From: Scotti Kalupa [mailto:skalupa@vabankers.org]
Sent: Monday, June 05, 2006 11:45 AM
To: ChangeInControl
Cc: Walter Ayers; Bruce Whitehurst; Jay Spruill; Phil Boykin
Subject: Home Depot, Inc. Application

June 5, 2006

Mr. Martin J. Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D. C. 20429

Mr. John F. Carter
Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square
Suite 2300
San Francisco, California 94105

Re: Home Depot, Inc. ("Home Depot") Application

Dear Acting Chairman Gruenberg and Mr. Carter:

I am writing on behalf of the Virginia Bankers Association ("VBA") to comment on the application of Home Depot to acquire EnerBank USA, an industrial bank. The VBA represents nearly all of the commercial banks and savings institutions doing business in the Commonwealth of Virginia.

We are very concerned about the ramifications of a Home Depot bank, and the breach of the wall separating banking and commerce such a bank charter would represent. As a large retailer, Home Depot, given a bank charter, could have a dramatic negative impact on the banking system and those it serves. We therefore urge the Federal Deposit Insurance Corporation ("FDIC") to deny Home Depot's application.

Mixing of Banking and Commerce

Home Depot seeks to exploit a loophole in the Bank Holding Company Act that undermines an important principle in our current banking system: the prohibition on the mixing of banking and commerce. This long-standing principle was reaffirmed recently with the enactment of the Gramm-Leach-Bliley Act ("GLBA") of 1999, which, among other things, shut down the ability of commercial firms to own thrifts. Any decision to reverse the GLBA-mandated separation of banking and commerce should be a Congressional decision, NOT a regulatory decision. Decisions to reverse policies of the Congress should only be made by the Congress. Indeed, members of Congress have expressed significant concerns relating to the mixing of banking and commerce raised by the Wal-Mart Stores, Inc. application, and have called for a moratorium on any approval of a commercial firm establishing or acquiring an industrial bank until it has had time to review the issue and take appropriate action.

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The general prohibition on the mixing of banking and commerce is there for good reason: to prevent conflicts of interest. And there could not possibly be a more potent conflict of interest than the one that will exist with a Home Depot bank.

A Home Depot bank likely would not want to lend to a competing business in the community, nor would it want to provide financing to a start-up business that would compete against Home Depot. And any such competing businesses would be loathe to share their business plans with a Home Depot bank in connection with an application for credit. Because of its commercial business activities (which other banks do not and cannot engage in), Home Depot would not be able to make impartial credit decisions based on the creditworthiness of borrowers, but rather would be influenced by business considerations relating to its unique business plan. We contend that this kind of conflict is precisely why the general prohibition on the mixing of banking and commerce exists. The dangers of allowing Home Depot to subvert this prohibition are particularly acute given its size.

Competitive Unfairness

If Home Depot is allowed to exploit the Bank Holding Company Act loophole and is granted an industrial bank charter, it will have a huge competitive advantage over other banks. This is the case because banks cannot generally engage in commercial activities. They cannot acquire a non-financial retail outlet. The GLBA precludes it.

Why should one of the largest companies in the world be granted the privilege of doing what local banks cannot? Why should Home Depot have the ability to have a bank while local banks that must compete with a Home Depot bank have no ability to combine banking with a non-financial retail business? We simply believe it would be fundamentally unfair to allow Home Depot to establish a bank when banks have no authority to get into Home Depot's business.

Moreover, Home Depot would not be subject to the same supervisory requirements as banks. Home Depot, as the ultimate parent company of its bank, would not be subject to the Federal Reserve's regulatory and supervisory requirements that apply to other bank holding companies. Again, this is because of the loophole in the Bank Holding Company Act that exempts commercial firms that own industrial banks from the Act's requirements. Not only does this raise safety and soundness concerns, it also leaves banks at a competitive disadvantage, since regulatory burdens and costs to which they are subject would not apply to Home Depot.

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Safety and Soundness

If the Home Depot application is approved, it would be allowed to operate a bank without umbrella supervision by the Federal Reserve. This raises serious safety and soundness concerns.

The Federal Reserve has stated that consolidated supervision is essential in order to provide protection to insured banks that are part of a larger organization, and to the federal safety net. Problems in a parent of a bank can quickly spread to the bank, and therefore allowing a company that owns a bank to operate outside the supervisory framework established by Congress poses substantial risks. This is particularly true in Home Depot's case since it is such a large company and would expose the bank to the risk associated with its commercial enterprises. The absence of a supervisory framework for Home Depot puts the Bank Insurance Fund, the banks that support it, and indeed taxpayers at unjustifiable risk.

Conclusion

As stated above, Home Depot's bank proposal would pose unacceptable risk to the banking system and its regulatory safety net; result in hugely unfair competition to existing banks, likely driving some of them out of business; and create unacceptable conflicts of interest. Home Depot's bank proposal simply is not in the best interests of consumers, small businesses, their communities, and our banking system. Moreover, approval of the application would usurp the Congressionally mandated separation between banking and commerce. We therefore urge the Federal Deposit Insurance Corporation to deny Home Depot's application.

Sincerely,

Walter C. Ayers
President and CEO
Virginia Bankers Association

WCA/sk